THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. No.3645 of 1998

DATED: 19.09.2007

Between:-

Ch.Venkat Rao.

...

PETITIONER
AND

A.P.State Co-operative Marketing Federation Limited, rep. By its Managing Director, Parishram Bhavan, Basheerabad, Hyderabad & others.

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RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3645 of 1998

O R D E R:

Seeking a direction to the respondents to pay salary to the petitioner in terms of the revised pay scales from the date of his reinstatement i.e. from 27-08-1997 along with other arrears and to declare the action of the respondents in making certain illegal deductions as arbitrary, illegal and in violation of principles of natural justice, the present writ petition is filed.

Petitioner is aggrieved by the action of the respondents in deducting Rs.5,000/- p.m. from his salary without there being an order to that effect and without putting him on notice. Questioning the action of the respondents in removing him from service, vide proceedings dated 15-07-1996, the petitioner filed W.P.No.24477 of 1996. This Court, by order dated 19-12-1996, set aside the impugned order and directed the respondents to conduct an enquiry from the stage of show cause notice after affording an opportunity of being heard to the petitioner. This Court observed that since the petitioner was placed under suspension pending enquiry, he would continue to be under suspension until the enquiry is disposed of in accordance with law. Petitioner would contend that, even after orders were passed in the writ petition, the respondents did not take any steps to conduct an enquiry or pay subsistence allowance and, since the legal notice dated 22-04-1997 did not elicit any positive reply, he filed C.C.No.989 of 1997, which was admitted on 22-07-1997. On the respondents'

submission that it was contemplating to reinstate the petitioner into service, C.C.No.989 of 1997 was closed on 19-08-1997. Respondents issued proceedings dated
20-08-1997 reinstating the petitioner, posted him as a Manager and the petitioner took charge on 27-08-1997. While matters stood thus, the respondents effected deduction from the petitioner's salary under the head "others", without specifying under what clause of the service regulations such amount was being deducted. Petitioner would contend that deduction of the said amount from 27-08-1997 onwards was illegal and necessitated his filing a representation on 24-10-1997 seeking that his entire salary be released. Since the petitioner's salary was not released in full, even thereafter, he again submitted a representation on 02-11-1997. The said deductions continued even thereafter. Petitioner would contend that in addition to reimbursement of the illegal deductions, he is also entitled for fixation of his pay in the revised pay-scales.

The second respondent, in his proceedings dated
13-11-1997, observed that the petitioner was due an amount of Rs.59,345/-. Petitioner contended that, since the amount allegedly due pertained to a period 20 years prior thereto, it was impossible for anyone to recollect as to whether the amounts had indeed been taken. Petitioner would contend that no enquiry was held pursuant to his objections and, with regards the other advances, the respondents had vaguely mentioned the figure as Rs.11,897.75ps.

In the counter affidavit filed on behalf of the respondents, it is stated that the amounts being recovered were recoveries required to be made as they arise out of the advances drawn by the petitioner earlier. Respondents would justify the recoveries on the ground that the petitioner was due to retire in July, 1998. It is stated that the petitioner was found to be due a sum of Rs.63,435.75 ps. for which he had not rendered any account over

the years, that the outstanding amounts were verified and quantified in the audited statements from the years 1974-75 onwards and that the extracts of the audited reports for the years 1974-75, 1980-81 to 1996-97 were enclosed. Respondents would contend that the audit reports had pointed out the recoveries to be effected against employees of MARKFED, including the petitioner herein. Respondents would contend that the recoveries arose out of the advances drawn by the petitioner from time to time, which were neither accounted nor were refunded to MARKFED and that an amount of Rs.63,435.75ps. was still to be recovered. Respondents would refer to the petitioner's letter dated 27-03-1996 representing that he had accounted for these advances by submitting necessary vouchers to the then Branch Manager. It is stated that a memo dated 08-05-1996 was addressed to the then Branch Manager and in his reply, the then Branch Manager had not only denied his having received any vouchers from the petitioner but had also alleged that the petitioner had drawn advances from the society without his knowledge. Thereafter, the respondents, vide notice dated 26-08-1997, had called upon the petitioner to either remit the amount or submit proof for adjustment and that the petitioner for the first time, in his letter dated 08-09-1997, had disputed the entitlement of MARKFED to recover the advances shown as outstanding against his name. Reference is made to the letter dated 20-09-1997, wherein the petitioner was again requested to submit proof of his having submitted bills for adjustment of these advances. It is stated that, since the petitioner failed to do so, the respondents were forced to conclude that, in the absence of any proof, he had taken the advances and, since the advances remained outstanding, proceedings were initiated for recovery of the amount. Respondents would contend that the petitioner was fully aware of the recoveries made against him at the rate of Rs.5,000/- p.m., that such recoveries were made

on the basis of the statutory audit reports and as he himself had admitted having taken the advance in his representation on 27-03-1996. According to the respondents, the petitioner's salary was re-fixed in the revised pay scales and it was not released since he was placed under suspension and deductions were being made in monthly instalments for the amounts outstanding against him.

Sri V.Ajay Kumar, learned counsel for the petitioner, would contend that the audit reports, on which reliance was placed by the respondents, are spread over for a period of 20 years i.e. from 1974-75 onwards. Learned counsel would submit that these audit reports were prepared annually and nothing prevented the respondents from bringing them to the notice of the petitioner soon thereafter and seeking his explanation in this regard. Learned counsel would submit that, after a lapse of more than 21 years, it is humanly impossible for anyone, let alone the petitioner, to state what transpired 21 years ago and it is in this light that the petitioner's representation dated 27-03-1996 is required to be examined. Learned counsel would submit that the petitioner had claimed to have accounted for the advances to the then Branch Manager and had also pointed out that several employees, who were in receipt of the advances, had also submitted their accounts to the then Branch Manager and it was he who had committed fraud. Learned counsel would submit that, in the light of the specific assertion of the petitioner denying the allegation of his not accounting for the advance and, in the light of his submission that the then Branch Manager was responsible, the respondents ought to have conducted an enquiry to establish the charge against him and their failure to do so necessitated their action in effecting recoveries from the salary of the petitioner being held to be arbitrary, illegal and in violation of principles of natural justice. Learned counsel would submit that this Court, while declaring the action of the respondents as illegal, should direct the respondents

to pay the petitioner his terminal benefits including the illegal deductions made from his salary.

Sri T.S.Praveen Kumar, learned counsel appearing on behalf of the respondents, would submit that the petitioner had, in his letter dated 27-03-1996, admitted receipt of the advances and it was for him to establish that he had accounted for these advances to the Branch Manager. Learned counsel would point out that in the face of the specific denial by the then Branch Manager, of his having received any vouchers or bills relating to the advances given to the petitioner, the burden was on him to establish that he had furnished the information to the then Branch Manager. Learned counsel would specifically refer to Section 50 of the A.P.Co-operative Societies Act to contend that the audit conducted is a statutory audit and it was for the advances which were not accounted for, as highlighted in the statutory audit, were the respondents seeking to recover the amounts due from the petitioner. Learned counsel would contend that, instead of proceeding to take action under Section 60 of the A.P.Co-operative Societies Act for surcharge, the respondents had considered it appropriate to call upon the petitioner to come over to their office to submit details of the expenditure incurred by him towards the advances given to him over the past 21 years. Learned counsel would submit that the respondent is a public sector undertaking and, since the amounts which remained unaccounted for relate to public funds, no indulgence should be shown to the petitioner and he should be held liable to repay the amount advanced to him of Rs.63435.75 ps.

Since the entire basis, of the respondents' contention that the burden is on the petitioner, is his alleged admission in his letter dated 27-03-1996, it is necessary to briefly refer to the contents of the said letter. In his letter dated 27-03-1996 the petitioner stated

that he now learnt that about Rs.40,000/-, towards advance amount was outstanding against him as per the audit report, that the said amount related to the period prior to 1975 when he worked at Vijayawada Branch Office under Sri A.Krishna Mohan Rao, the then Branch Manager and while he came to know that this amount was outstanding against him, he was not informed of these details till date. He further stated that Sri A.Krishna Mohan Rao, the then Branch Manager, was to retire in the middle of the year 1996 and he, therefore, felt it necessary, in his own interest, to bring this fact to the notice of the Managing Director. Petitioner would state that, as far as he could remember, the said amount was given to him by the then Branch Manager, Sri A.Krishna Mohan Rao, purely for official purposes i.e. for railway freight, transportation charges for fertilizers etc during the period

1972-75, that he also remembered that the then Branch Manager used to write letters to the societies, which owed money to the respondents, requesting them to pay money, which would be adjusted towards the outstanding amount due to MARKFED under procurement account and that, in a similar manner, advances were taken by other employees such as Sri P.Basi Reddy, K.Nageswar Rao and P.Panduranga Rao. Petitioner would state that, to the best of his memory, he was given advances from the District Cooperative Marketing Society and Motur, L.S.C.S. and similarly other employees were given such advances for official purposes. Petitioner stated that he had submitted accounts, for the advances taken by him from time to time, to the Branch Manager, that the vouchers were submitted for adjustment of his account and that the Branch Manager had cheated him and had failed to adjust his account and that of the other employees. Petitioner requested the Managing Director to look into the matter, set right the great injustice done to him and to withhold payment of retiral benefits to Sri A.Krishna Mohan Rao, the then Branch Manager, till justice

was done to him.

The contents of the said letter would reveal that the amounts relate to the period 1972-75 and the submissions made by the petitioner were to the best of his memory. The petitioner, while stating that these amounts represented the advances given to him towards payment of freight and transportation charges, specifically contends that he has accounted for these advances by handing over vouchers to the then Branch Manager, Sri A.Krishna Mohan Rao. He also states that he has written the letter dated 27-03-1996 on his own accord since Sri A.Krishna Mohan Rao was due to retire in the middle of the year 1996. Petitioner, in fact, specifically requested the Managing Director to withhold payment of terminal benefits of Sri A.Krishna Mohan Rao, the then Branch Manager, till justice was done to him. While the respondents would refer to the subsequent correspondence to contend that Sri A.Krishna Mohan Rao had denied receipt of the bills and vouchers from the petitioner, the fact remains that, in the face of the specific assertion by the petitioner of Sri A.Krishna Mohan Rao being responsible and the specific denial by Sri A.Krishna Mohan Rao of having received bills and vouchers towards the said advances, the respondents ought to have conducted a departmental enquiry to elicit the truth and fix responsibility on the person responsible, be it the petitioner or Sri A.Krishna Mohan Rao, the then Branch Manager. Despite the petitioner's letter dated 27-03-1996, the respondents chose not to hold an enquiry in this regard. There is nothing on record to indicate as to whether the terminal benefits of Sri A.Krishna Mohan Rao were withheld. It is necessary to note that while great stress has been placed by Sri T.S.Praveen Kumar, learned counsel for the respondents, on the audit reports enclosed to the counter affidavit, these audit reports are spread over a period of twenty years from 1974-75 to 1995-96. It is not even the case of the respondents that the audit for the entire 21 years was

conducted later. In fact, Sri T.S.Praveen Kumar, learned counsel for the respondents, would fairly submit that audit was conducted each year. If that be so, the respondents, immediately after receipt of the audit reports, ought to have taken action against the petitioner or Sri A.Krishna Mohan Rao, the then Branch Manager, and ought not to have kept silent for more than two decades. While it is true that the degree of proof in departmental enquiries is preponderance of probabilities, the fact remains that the burden to establish the charge, even on the basis of preponderance of probabilities, lies on the employer and an employee cannot be presumed to be guilty merely on the basis of certain allegations made against him. The action of the respondents in seeking to recover a sum of Rs.63,435.75 ps., from the salary of the petitioner, without conducting an enquiry, in this regard, is in violation of principles of natural justice.

While Sri T.S.Praveen Kumar, learned counsel for the respondents, seeks liberty to now take action against the petitioner to recover the amounts due, Sri V.Ajay Kumar, learned counsel for the petitioner, would point out that the petitioner has retired from service nearly a decade ago and, at this point of time, no enquiry can be held against either the petitioner or Sri A.Krishna Mohan Rao, the then Branch Manager, who had retired even earlier in mid 1996. I do not see any reason to examine these questions. Suffice to hold that this order shall not preclude the respondents from taking action against the petitioner. If, however, no such action is taken within a period of three months from the date of receipt of a copy of this order, the petitioner shall be paid his entire terminal benefits, including the recoveries made from his salary earlier. If he has not been extended the benefit of revised pay scales, the same shall also be extended. The Writ Petition is allowed. However, in the circumstances, without costs.

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19-09-2007

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